

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF NEBRASKA

STEVEN M. DENENBERG,

Cross-Plaintiff,

v.

DOCTORS SURGERY CENTER,  
Individually and doing business as  
Surgeontothestars.com,

Cross-Defendant.

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Civil Action No. 8:07-CV-00150

**DEFENDANT'S ANSWER TO  
CROSS-PLAINTIFF STEVEN M.  
DENENBERG'S CROSS-  
COMPLAINT [DOCUMENT 76]  
(Cross-Defendant)**

COME NOW the Cross-Defendant DOCTORS SURGERY CENTER (hereinafter "DOCTORS" or "Cross-Defendant"), for itself and itself alone, in the above entitled action and for its answer to Cross-Plaintiff STEVEN M. DENENBERG'S (hereinafter "DENENBERG" or "Cross-Plaintiff") Cross-Complaint generally denies the allegations therein.

DOCTORS denies generally and specifically each and every allegation in the unverified cross-complaint, and further denies that Cross-plaintiff has suffered damages in the amount alleged, or in any amount at all, for any reason whatsoever.

**FIRST AFFIRMATIVE DEFENSE**

As a first and separate defense to the cross-complaint herein, this answering cross-defendant states that this Court lacks personal jurisdiction over him in this action.

**SECOND AFFIRMATIVE DEFENSE**

As a second and separate defense to the cross-complaint herein, this answering cross-defendant states that cross-plaintiff lacks standing to bring suit against this answering cross-defendant.

**THIRD AFFIRMATIVE DEFENSE**

As a third and separate defense to the cross-complaint herein, this answering cross-defendant states that cross-plaintiff has failed to allege sufficient facts to state a cause of action against this answering cross-defendant.

**FOURTH AFFIRMATIVE DEFENSE**

As a fourth and separate defense to the cross-complaint herein, this answering cross-defendant states that cross-plaintiff has failed to take reasonable steps to mitigate his damages, if any, which damages this answering cross-defendant denies.

**FIFTH AFFIRMATIVE DEFENSE**

As a fifth and separate defense to the cross-complaint herein, this answering cross-defendant states that each cause of action in the cross-complaint is barred by the legal doctrines of waiver, release, estoppel, acquiescence, and detrimental reliance.

**SIXTH AFFIRMATIVE DEFENSE**

As a sixth and separate defense to the cross-complaint herein, this answering cross-defendant states that each cause of action in the complaint is barred, wholly or partially, by the doctrine of unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE**

As a seventh and separate defense to the cross-complaint herein, this answering cross-defendant states that cross-plaintiff consented to all of the alleged acts and events set forth in this cross-complaint.

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**EIGHTH AFFIRMATIVE DEFENSE**

As an eighth and separate defense to the cross-complaint herein, this answering cross-defendant states that it specifically reserves the right to raise any additional defenses that are discovered or ascertained after the date of this answer.

**NINTH AFFIRMATIVE DEFENSE**

As a ninth and separate defense to the cross-complaint herein, this answering cross-defendant states that there are no factual or probable basis or probable causes of action upon which cross-plaintiff instituted the cross-complaint. Accordingly, said cross-defendant intends this affirmative defense to put cross-plaintiff on notice that his claims as against this answering cross-defendant are perceived to be frivolous and in bad faith; this cross-complaint is an abuse of process and constituted malicious prosecution, and this answering cross-defendant is entitled to recover attorney's fees, costs and expenses associated with the defense of this action pursuant.

**TENTH AFFIRMATIVE DEFENSE**

As a tenth and separate defense to the cross-complaint herein, this answering cross-defendant states that it is excused from any and all liability under the facts alleged in the cross-complaint because at all material times this answering cross-defendant's conduct was free of negligence and/or any intent to cause the acts of which cross-plaintiff complains.

**ELEVENTH AFFIRMATIVE DEFENSE**

As an eleventh and separate defense to the cross-complaint herein, this answering cross-defendant states that cross-plaintiff ratified the alleged actions, if any, which occurred, and is thereby barred from recovery.

**TWELFTH AFFIRMATIVE DEFENSE**

As a twelfth and separate defense to the cross-complaint herein, this answering cross-defendant states that cross-plaintiff's claims are barred by the equitable doctrine of laches.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

As a thirteenth and separate defense to the cross-complaint herein, this answering cross-defendant states that it's acts and omissions to act as alleged by the cross-plaintiff were not the proximate cause of the loss or damage, if any, for which recovery is sought.

**FOURTEENTH AFFIRMATIVE DEFENSE**

As a fourteenth and separate defense to the cross-complaint herein, any alleged acts or omissions of this answering defendant were not a substantial factor in bringing about cross-plaintiff's claimed injuries and were not contributing causes thereof, and were superseded by the acts or omissions of others, including, but not limited to the acts or omissions of cross-plaintiff, which ere independent, intervening, and proximate causes of any injury or damage allegedly suffered by cross-plaintiff.

**FIFTEENTH AFFIRMATIVE DEFENSE**

As a fifteenth and separate defense to the cross-complaint herein, this answering cross-defendant states that the claims of cross-plaintiff are barred by the Statute of Limitations.

**SIXTEENTH AFFIRMATIVE DEFENSE**

As a sixteenth and separate defense to the cross-complaint herein, this answering cross-defendant states that the cross-plaintiff failed to exercise ordinary care on his own behalf with regard to the allegations in the cross-complaint. Any injuries or damages sustained by cross-plaintiff as a result of those allegations were legally and proximately caused by cross-plaintiff's own negligence, and cross-plaintiff's recovery, if any, must be diminished in proportion the amount of negligence attributable to cross-plaintiff.

WHEREFORE, DOCTORS prays for judgment as follows:

1. That Cross-plaintiff takes nothing by reason of its Cross-Complaint;
2. That DOCTORS be dismissed from all causes of action in the Cross-Complaint;

3. That DOCTORS be awarded its costs of suit herein, according to law, and attorney fees; and

4. For such other relief as the Court may deem just and proper.

Dated: August 18, 2010

S/Edwin R. Cottone  
Edwin R. Cottone, Esq.  
Attorney for Defendant  
DOCTORS SURGERY CENTER

**CERTIFICATE OF SERVICE**

I, Halley Bonfanti, hereby certify that on August 18<sup>th</sup>, 2010 a true and correct copy of the foregoing: **DOCTOR'S SURGERY CENTERS ANSWER TO CROSS-COMPLAINT OF STEVEN M. DENENBERG** was served upon the following via PACER or first-class mail, postage prepaid and addressed to:

Norman Denenberg, Esq.  
3815 Dodge Street  
Omaha, NE 68131

S/Halley Bonfanti  
Halley Bonfanti